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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME LEGORRETA CABRERA,

Defendant and Appellant.

H033966

(Santa Clara County

Super. Ct. No. 150430)

Jaime Cabrera (defendant) appeals from the denial of his "Corum Nobis" petition. We appointed counsel to represent him on appeal. Counsel filed a brief that set forth the facts and procedural history of the case. Counsel presented no argument for reversal but asked this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. On September 2, 2009, we notified defendant of his right to submit written argument on his own behalf within 30 days. To date, we have not received a response from defendant.

We have reviewed the entire record and find no error in the trial court's order. Therefore, we affirm the order.

On September 27, 1991, defendant was convicted of possession for sale of cocaine (Health & Saf. Code, § 11351), possession for sale of marijuana (Health & Saf. Code,

§ 11359), and being under the influence of a controlled substance (Health & Saf. Code, § 11550).

The facts of defendant's underlying convictions are scant. The only reference this court can find to the underlying offenses in the record before us can be found in a petition to modify probation. It appears that on "September 1, 1991, at 6:15 p.m. San Jose Police were patrolling off Welch and Nordale Avenue, an area well known for narcotics activity, [an] officer observed the defendant in a hand-to-hand transaction. When the defendant saw the patrol car he threw several baggies away. A search of the defendant and ground area produced 33 one-quarter gram baggies of cocaine and nine one-quarter baggies of marijuana and \$53."

On May 21, 2007, defendant, in propria persona, filed a document entitled "Petitioner's Motion for Order of Vacatur 'Nunc Pro Tunc.'" Defendant stated that he was in federal custody in Iowa serving a life sentence. In the petition, in essence, defendant alleged that his guilty plea in his 1991 case in Santa Clara County was involuntary and requested that the judgment of conviction be vacated nunc pro tunc. In a sworn declaration, defendant declared that the arresting officer had physically abused him and had warned him not to " 'fight . . . the charges . . . or else' " Defendant suggested that he was not represented by defense counsel.

On June 19, 2007, the trial court issued a brief written order denying appellant's motion. The court cited to this court's decision in *People v. Kim* (2007) 150 Cal.App.4th 1158, in which we held among other things that a defendant cannot bring a nonstatutory motion to vacate a conviction based on ineffective assistance of counsel. (*Id.* at pp. 268-270)<sup>1</sup>

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<sup>1</sup> Subsequently, the California Supreme Court granted review in *People v. Kim*, *supra*, 150 Cal.App.4th 1158 and in *People v. Hyung Joon Kim* (2009) 45 Cal.4th 1078, held that since courts have long treated nonstatutory motions to vacate as writs of *error coram nobis* (*id.* at p. 1096), and because the defendant had not shown diligence in

Subsequently, on January 21, 2009, defendant filed a "Corum Nobis" petition. This time, appellant requested that the trial court "rehear" his claim of actual innocence and "[r]esentence at worst to actual crime, personal use to Cal. Pen. Code 11350 . . . ." In a rambling motion, defendant assigned the following errors in support of his petition: 1) denial of assistance of counsel; 2) an involuntary and unknowing plea; 3) "buyer seller"—which we interpret to be a claim that there was insufficient evidence of possession with intent to sell; 4) the conviction was supported by "unreliable hearsay"; 5) unreliable expert testimony; 6) an illegal search and/or seizure in violation of the Fourth Amendment to the United States Constitution; and 7) invalid conviction under the United States Supreme Court's decision in *Apprendi v. New Jersey* (2000) 530 U.S. 466.

On February 20, 2009, the trial court denied the petition. In so doing, the court noted that the abstract of judgment from defendant's 1991 case reflected that defendant was represented by counsel. Furthermore, defendant's remaining claims were precluded at such late date by *People v. Chien* (2008) 159 Cal.App.4th 1283.

Having reviewed the entire record, we find there are no arguable issues on appeal.

The "writ of error *coram nobis* ' "does not lie to correct any error in the judgment of the court nor to contradict or put in issue any fact directly passed upon and affirmed by the judgment itself. If this could be, there would be no end of litigation. . . . The writ of error *coram nobis* is not intended to authorize any court to review and revise its opinions; but only to enable it to recall some adjudication made while some fact existed which, if before the court, would have *prevented the rendition of the judgment*; and which without fault or negligence of the party, was not presented to the court." ' [Citation.] As one Court of Appeal described it: 'It is not a writ whereby convicts may attack or relitigate just any judgment on a criminal charge merely because the unfortunate person may

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pursuing the writ (*id.* at pp. 1098-1099), the Supreme Court affirmed this court's decision to reverse the trial court. (*Id.* at p. 1109.)

become displeased with his confinement or with any other result of the judgment under attack.' [Citation.]" (*People v. Hyung Joon Kim, supra*, 45 Cal.4th at p. 1092.)

*Disposition*

The superior court's order denying defendant's petition for writ of error *coram nobis* is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.